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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA, New York, N.Y.  
4 v. 21 Cr. 446 (VSB)  
5 ANDREW FRANZONE,  
6 Defendant.

7 -----x

8 April 11, 2025  
9 4:20 p.m.

10 Before:

11 HON. VERNON S. BRODERICK,  
12 U.S. District Judge  
13

14 APPEARANCES

15 MATTHEW R. PODOLSKY  
16 Acting United States Attorney for the  
17 Southern District of New York  
18 BY: SARAH MORTAZAVI  
MARGUERITE COLSON  
MARGARET E. LYNAUGH  
Assistant United States Attorneys

19 RUBINSTEIN & COROZZO, LLP  
20 Attorneys for Defendant  
21 BY: JOSEPH R. COROZZO  
ANGELA D. LIPSMAN  
22  
23  
24  
25

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(Case called)

THE COURT: If I can ask counsel to please identify themselves for the record.

MS. MORTAZAVI: Good afternoon, your Honor. For the government you have got Sarah Mortazavi, Margueritz Colson, and Maggie Lynaugh.

THE COURT: For the defense?

MR. COROZZO: Good afternoon, your Honor. On behalf of Mr. Franzone Joseph Corozzo, and to my left is my associate Angela Lipsman.

THE COURT: Thank you. Good afternoon.

Mr. Franzone, I have been informed that you wish to plead guilty to Counts and Two of indictment 21 CR 446, which charges you with securities fraud and wire fraud respectively. Is that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, before I accept your plea I'm going to ask you certain questions so that I can establish, to my satisfaction, that you are pleading guilty because you are in fact guilty and not for some other reason, and also to establish to know what you will be giving up by pleading guilty. If you don't understand one of my questions, or if you wish additional time to speak with your attorneys, just let me know and either I will try and answer your question or I will allow you the time you need to speak with your attorneys.

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1 If I could ask, Mr. Quintero, if you could please  
2 swear in Mr. Franzone?

3 THE DEPUTY CLERK: Mr. Franzone, can you stand and  
4 raise your right hand?

5 (Defendant sworn)

6 THE COURT: What is your full name?

7 THE DEFENDANT: Andrew Terrence Franzone.

8 THE COURT: How old are you?

9 THE DEFENDANT: 48 years old.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: MBA at Columbia Business School.

12 THE COURT: Have you ever been treated or hospitalized  
13 for any mental illness?

14 THE DEFENDANT: No.

15 THE COURT: Are you now or have you recently been  
16 under the care of a doctor or a psychiatrist?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever been treated or hospitalized  
19 for any type of addiction including drug or alcohol addiction?

20 THE DEFENDANT: No.

21 THE COURT: Have you taken any drugs, medicine or  
22 pills, or drunk any alcoholic beverages in the past 24 hours?

23 THE DEFENDANT: No.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand what is happening today?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me ask defense counsel, Mr. Corozzo,  
4 have you discussed this matter with Mr. Franzone?

5 MR. COROZZO: I have, your Honor.

6 THE COURT: From your perspective, does he understand  
7 the rights that he will be waiving by pleading guilty?

8 MR. COROZZO: Yes, your Honor.

9 THE COURT: Similarly, from your perspective, is he  
10 capable of understanding the nature of these proceedings?

11 MR. COROZZO: He is, your Honor.

12 THE COURT: Do either counsel, any counsel, have any  
13 doubt as to Mr. Franzone's competence to plead guilty at this  
14 time?

15 MS. MORTAZAVI: No, your Honor.

16 MR. COROZZO: No, your Honor.

17 THE COURT: So, Mr. Franzone, on the basis of your  
18 responses to my questions, my observations of you here in  
19 court, in other words your demeanor, I find that you are fully  
20 competent to enter an informed plea of guilty at this time.

21 Have you received a copy of the indictment,  
22 Mr. Franzone?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you read it?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now, do you waive its public reading or do  
2 you wish me to read it to you?

3 THE DEFENDANT: I will waive it.

4 THE COURT: OK.

5 Have you had enough of a chance to discuss with your  
6 attorneys the charges to which you intend to plead guilty and  
7 any possible defenses to those charges?

8 THE DEFENDANT: Yes.

9 THE COURT: Have your attorneys explained to you the  
10 consequences of entering a plea of guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you satisfied with your attorney's  
13 representation?

14 THE DEFENDANT: Yes.

15 THE COURT: Now I'm going to explain to you certain  
16 constitutional rights that you have. Now, these are rights  
17 that are you going to be giving up by pleading guilty. So, as  
18 I mentioned earlier, listen carefully, and if you don't  
19 understand something that I have said, just stop me, and either  
20 I or your attorneys will explain it to you more fully. OK?  
21 You just have to answer verbally.

22 THE DEFENDANT: Yes.

23 THE COURT: So, under the Constitution and laws of the  
24 United States you have the right to plead not guilty and to go  
25 to trial on the charges in the indictment.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, if you did plead not guilty, you  
4 would be entitled to a speedy and public trial by a jury on the  
5 charges contained in the indictment.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, at a trial you would be presumed  
9 innocent, and the government would be required to prove your  
10 guilt beyond a reasonable doubt using competent evidence before  
11 you could be found guilty.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, a jury of 12 people would have to  
15 agree unanimously that you were in fact guilty and you would  
16 not have to prove that you were innocent if you were to go to  
17 trial.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, at every stage of the case you would  
21 be entitled to be represented by an attorney, and if you  
22 couldn't afford an attorney, one would be appointed at public  
23 expense, in other words free of cost to you, to represent you.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now, during the trial the witnesses would  
2 have to come here to court and testify in your presence. Your  
3 attorneys could cross examine the witnesses for the government,  
4 object to evidence offered by the government, and offer  
5 evidence on your own behalf, if you so desired. You would also  
6 have the right to have subpoenas issued or other process to  
7 compel witnesses to come and testify in your defense.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, at a trial, although you would have  
11 the right to testify if you wanted to, you would also have the  
12 right not to testify, and if you decided not to testify, no  
13 one, including the jury, could draw a negative inference from  
14 the fact -- excuse me, could draw an inference or a suggestion  
15 of guilt from the fact that you did not testify.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you had a full opportunity to discuss  
19 with your attorneys whether there is a basis to seek  
20 suppression of some or all of the evidence against you on the  
21 grounds your Constitutional rights were violated?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that by pleading guilty  
24 you are giving up your right to seek suppression of any of the  
25 evidence against you?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that --

3 MR. COROZZO: Your Honor, however there were motions  
4 decided in this case.

5 THE COURT: Correct. I'm not sure -- there is a  
6 Pimentel letter so I think you preserve the appellate right to  
7 appeal those issues even if you are pleading guilty.

8 MR. COROZZO: I believe we have, your Honor.

9 THE COURT: OK.

10 Mr. Franzone, what that means is so there are two ways  
11 this could have gone. Right? You could have decided to plead  
12 guilty and there would have been a plea agreement, in which  
13 case you would have waived certain of your rights including a  
14 right to appeal under certain limited circumstances, in other  
15 words if your guideline range -- if I sentenced you to more  
16 than what was in the plea agreement, you could have appealed  
17 that but you couldn't have appealed the prior determination  
18 that I made with regard to your pretrial motions. You are  
19 pleading guilty here pursuant to a Pimentel letter so there is  
20 no understanding concerning the limitations with regard to your  
21 appellate rights concerning the prior decision that I made so  
22 you will have the ability to appeal that. OK?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, if you are convicted at trial, you  
25 would have the right to appeal that verdict.



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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: So even now, as you are entering your  
4 plea, you have the right to change your mind and to go to trial  
5 on the charges in the indictment.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: So, if you plead guilty and I accept your  
9 plea, you are going to be giving up your right to trial and the  
10 other rights I have just discussed with you other than your  
11 right to an attorney which you have regardless of whether or  
12 not you plead guilty. But you should understand there will be  
13 no trial and I will enter a judgment of guilty and sentence you  
14 on the basis of your plea after I have considered a presentence  
15 report, which will be prepared by the Probation Department, and  
16 whatever submissions I get from your attorneys and from the  
17 government's attorneys. There will be no appeal with respect  
18 to whether the government could use the evidence -- well, I was  
19 just going to say there would be no appeal with respect to  
20 whether the government could use the evidence against you or  
21 with respect to whether you did or did not commit this crime,  
22 and the exception is with regard to the pretrial motions that  
23 you have made.

24 OK?

25 THE DEFENDANT: Yes.

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1 THE COURT: If you plead guilty, you will also have to  
2 give up your right not to incriminate yourself because in a  
3 moment I'm going to ask you to tell me what it is you did that  
4 makes you believe that you are guilty of the charges in Counts  
5 One and Two of the indictment.

6 Do you understand each and every one of the charges  
7 that I have just discussed with you?

8 THE DEFENDANT: Yes.

9 THE COURT: And are you willing to give up your right  
10 to trial and the other rights?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that you are charged  
13 with securities fraud in violation of Title 15, United States  
14 Code, Sections 78j(b) and 78ff, Title 17, Code of Federal  
15 Regulations, Section 240.10b-5, and Title 18, United States  
16 Code, 2, as well as Title 18, United States Code, Section 1343  
17 and also Section 2.

18 Do you understand that you are charged with securities  
19 fraud and wire fraud under those statutes?

20 THE DEFENDANT: Yes.

21 THE COURT: Let me ask the government to please state  
22 the elements of the crimes in question.

23 MS. MORTAZAVI: Certainly, your Honor.

24 With respect to Count One, had this matter proceeded  
25 to trial, the government would have to prove the following

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1 elements beyond a reasonable doubt:

2 First, that in connection with the purchase or sale of  
3 a security, the defendant employed a device, scheme, or  
4 artifice to defraud, made an untrue statement of a material  
5 fact or omitted to state a material fact which omission made  
6 what was said misleading; or engaged in an act, practice, or  
7 course of business that operated or would operate as a fraud or  
8 a deceit upon a purchaser or seller of the security;

9 Second, that when the defendant engaged in this scheme  
10 he acted knowingly, willfully, and with an intent to defraud;  
11 and

12 Third, that in furtherance of the scheme, there  
13 occurred at least one use of any means or instrument of  
14 transportation or communication in interstate commerce, or the  
15 use of the mails, or the use of any facility of any national  
16 securities exchange.

17 The government would also have to prove venue by a  
18 preponderance of the evidence.

19 With respect to Count Two, the government would have  
20 to prove the following elements beyond a reasonable doubt:

21 First, that the defendant employed a scheme or  
22 artifice to defraud or to obtain money or property by false  
23 pretenses, representations, or promises;

24 Second, that the false or fraudulent representation or  
25 concealment related to a material fact or matter;

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1 Third, that the defendant devised or participated in  
2 the scheme with knowledge of its fraudulent nature and with  
3 specific intent to defraud;

4 Fourth, that interstate wires were used in furtherance  
5 of the scheme to defraud or to obtain money or property by  
6 means of materially false or fraudulent pretenses,  
7 representations, or promises.

8 And, the government would also have to prove venue by  
9 a preponderance of the evidence.

10 THE COURT: Thank you.

11 Now, Mr. Franzone, do you understand that if you were  
12 to go to trial, the government would have to prove each of the  
13 elements the prosecutor just mentioned beyond a reasonable  
14 doubt, with the exception of venue?

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Now I'm going to tell you what the maximum  
18 penalty is for these crimes. Now, the maximum means that is  
19 the most you could possibly face. It doesn't necessarily mean  
20 that that is what you will get, but you need to understand that  
21 by pleading guilty, you are subjecting yourself to the  
22 possibility of any combinations up to the maximum I'm about to  
23 describe to you.

24 OK?

25 THE DEFENDANT: Yes.

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1 THE COURT: First, with regard to restrictions on your  
2 liberty, in other words possible terms of incarceration. The  
3 maximum term of imprisonment on Count One is 20 years'  
4 imprisonment, which could be followed by a maximum of three  
5 years of supervised release. The maximum term of imprisonment  
6 on Count Two is also 20 years, which could be followed by a  
7 maximum of three years of supervised release.

8 Supervised release means that you will be subject to  
9 the supervision of the probation department. There will be  
10 rules of supervised release that you will have to follow and if  
11 you violate those rules, you can be returned to prison without  
12 a jury trial to serve additional time with no credit for the  
13 time you served in prison as a result of your sentence and no  
14 credit for the time you spent on post-release supervision.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You should also understand there is no  
18 parole in the federal system, so that if you are sentenced to a  
19 term of imprisonment, you will not be released early on parole.  
20 However, there is a limited opportunity to earn credit for good  
21 behavior, but you will have to serve at least 85 percent of the  
22 time to which you are sentenced.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, second, in addition to restrictions

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1 on your liberty, there is certain maximum financial penalties  
2 that you face. So, the maximum allowable fine on Count One is  
3 \$5 million or twice the gross gain derived from the offense or  
4 twice the gross loss to persons other than yourself, whichever  
5 is greater. The maximum allowable fine on Count Two is  
6 \$250,000 or twice the gross gain derived from the offense or  
7 twice the gross loss to persons other than yourself, again,  
8 whichever is greater.

9 In addition, I must order restitution to any person or  
10 entity injured as a result of your crimes.

11 I can also order that you forfeit all property derived  
12 from the offense or used to facilitate the offenses.

13 Finally, I must order a mandatory special assessment  
14 of \$100 on each count, for a total of \$200.

15 Do you understand that these are the maximum possible  
16 maximum penalties?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Franzone, are you a United States  
19 citizen?

20 THE DEFENDANT: Yes.

21 THE COURT: Were you born in this country?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that as a result of your  
24 guilty plea you may lose certain valuable civil rights to the  
25 extent you have them or could otherwise obtain them such as the

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1 right to vote, the right to hold public office, the right to  
2 serve on a jury, and the right to possess any kind of firearm?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you currently serving any other  
5 sentence, whether state or federal, or are you being prosecuted  
6 by the state for any crime?

7 THE DEFENDANT: No.

8 THE COURT: Are you currently on parole?

9 THE DEFENDANT: No.

10 THE COURT: Now, do you understand that if anyone,  
11 your attorneys or the government's attorneys, have attempted to  
12 predict for you what your sentence will be, that their  
13 prediction could be wrong?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, no one, not your attorneys, not the  
16 government's attorneys -- no one -- can give you any assurance  
17 of what your sentence will be since, as I mentioned, I'm going  
18 to sentence you and we are not going to do that today. As I  
19 mentioned, I'm going to wait until I get the presentence  
20 report, do my own independent calculation of the guidelines  
21 that applies to your case as I am required to do under the law,  
22 consider that guideline range and any possible departures from  
23 it, and determine, ultimately, what a reasonable sentence is  
24 for you based on the sentencing factors contained in Title 18,  
25 United States Code, Section 3553(a).

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed these sentencing issues  
4 with your attorneys?

5 THE DEFENDANT: Yes.

6 THE COURT: So, even if your sentence is different  
7 from what your attorneys or what the government's attorneys  
8 have told you, even if it is different from what you expect or  
9 what is contained in the Pimentel letter -- which I will  
10 discuss with you in a moment -- you will still be bound by your  
11 guilty plea and I won't allow you to withdraw your plea of  
12 guilty.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, as I mentioned, there is a Pimentel  
16 letter here. Mr. Franzone, did you receive a Pimentel letter  
17 dated April 11 of 2025 earlier today?

18 MR. COROZZO: No, your Honor. There was no Pimentel  
19 letter. We --

20 THE COURT: Oh. OK. So why don't you take a moment.  
21 Do you have an extra copy so that Mr. Franzone can read it  
22 independently of his attorneys?

23 So, Mr. Franzone, why don't you take a moment to read  
24 through that letter and then speak with your attorneys about  
25 it. OK?



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1 If you want, Mr. Corozzo, if you want you can go to  
2 the witness room which is in the back, we can unlock it --

3 MR. COROZZO: It shouldn't be necessary, your Honor,  
4 because in the past we have had multiple plea agreements and  
5 drafts of plea agreements. These guidelines would be  
6 reflective of the last plea agreement so we will just go  
7 through the guidelines range.

8 THE COURT: I don't know -- I'm not privy to that  
9 but --

10 MS. MORTAZAVI: It is not identical to prior  
11 discussions and plea offers that have been made so there are  
12 some new elements.

13 THE COURT: So let's take the time. At a minimum, it  
14 won't include three points for acceptance of responsibility but  
15 there may be other things, for example it may have just been a  
16 plea to one count rather than the other.

17 So, why don't you take the time.

18 MR. COROZZO: Absolutely, your Honor.

19 THE COURT: Just let me know, let my staff know when  
20 you are ready to go.

21 MR. COROZZO: OK.

22 MS. MORTAZAVI: And your Honor?

23 THE COURT: Yes.

24 MS. MORTAZAVI: Since counsel is going to take a  
25 minute with his client, we just wanted to raise one issue that

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1 we wanted to make sure we clarify on the record.

2 THE COURT: Yes.

3 MS. MORTAZAVI: There was a colloquy on whether the  
4 defendant preserves his rights to appeal your Honor's  
5 suppression ruling.

6 THE COURT: Am I wrong about that?

7 MS. MORTAZAVI: Under *Tollett v. Henderson*, which is a  
8 1973 Supreme Court case, the defendant waives his rights --

9 THE COURT: Once he pleads guilty.

10 MS. MORTAZAVI: -- so his suppression motion --  
11 correct.

12 THE COURT: Even though, unless -- well, I suppose  
13 there could be a carve-out but there is no carve-out here, the  
14 Pimentel doesn't make it.

15 So what that means, Mr. Franzone, is that as I  
16 initially thought but I corrected myself in an incorrect way,  
17 so by pleading guilty, you are giving up your right to appeal  
18 my decision on your pretrial motions so you won't be able to  
19 appeal that. What you will be able to appeal ultimately is the  
20 sentence that you receive no matter where it is within the  
21 guidelines. OK?

22 Yes?

23 MS. MORTAZAVI: Your Honor, to preview so that defense  
24 counsel is aware of this, we are going to ask your Honor to  
25 direct the defendant to answer questions related to this just

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1 so that there is no potential ambiguity as to what he is  
2 waiving.

3 THE COURT: I'm sorry? Are these questions in  
4 connection with the factual allocution or are these  
5 questions --

6 MS. MORTAZAVI: In connection with the rights he  
7 believes he is preserving --

8 THE COURT: I see.

9 MS. MORTAZAVI: -- versus those that he is waiving by  
10 entering a guilty plea.

11 THE COURT: OK.

12 MS. MORTAZAVI: So that there is no confusion as to  
13 his understanding going into this hearing.

14 THE COURT: In addition, let me ask, I don't need to  
15 know the specifics, but were the prior plea agreements that  
16 were offered, were they more -- the guideline calculation, were  
17 they more beneficial other than the three points for acceptance  
18 of responsibility?

19 MS. MORTAZAVI: Yes.

20 THE COURT: OK. All right.

21 MS. MORTAZAVI: And just to clarify, your Honor, there  
22 was one plea agreement that was extended which was more  
23 beneficial. There was a second plea offer that was discussed,  
24 never formally extended on paper, but the guidelines that were  
25 discussed there were more beneficial as well.

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1 THE COURT: OK. All right.

2 So why don't you take the time to discuss the Pimentel  
3 with Mr. Franzone.

4 MR. COROZZO: Your Honor, you said we can use a room?

5 THE COURT: Yes.

6 THE DEPUTY CLERK: I will open it, Judge.

7 THE COURT: Great. Thank you.

8 (Recess)

9 THE COURT: So, as I mentioned, there is a Pimentel  
10 letter dated April 11. Mr. Franzone, have you had an  
11 opportunity to read that letter?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you had an opportunity to go over  
14 that letter with your attorneys?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that the Pimentel letter  
17 is not binding on me?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand the Pimentel letter is  
20 not a plea agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: So, as I mentioned, I have my own  
23 obligation to determine the correct guideline range here and  
24 what the appropriate sentence is in your case.

25 THE DEFENDANT: Yes.

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1 THE COURT: So I'm not saying that I'm going to come  
2 up with a guideline that is different than the Pimentel, but if  
3 I do, and even if that guideline range is higher, I still will  
4 not allow you to withdraw your guilty plea.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, the Pimentel calculates a guideline  
8 range of 168 to 210 months' imprisonment. Is that your  
9 understanding?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that the letter, that  
12 nothing in the letter limits the right of the government to  
13 change its position any time concerning the appropriate  
14 guideline range that applies in this case? Even if that change  
15 is based, in whole or in part, on the indictment or what was in  
16 the government's possession at the time they wrote the letter?  
17 In addition, it doesn't limit the government in its ability to  
18 argue to me or to the probation office, either orally or in  
19 writing, any and all facts and arguments relevant to sentencing  
20 that are available to the government at the time of sentencing,  
21 nor does anything in the letter limit the right of the  
22 government to seek a departure or variance from the guidelines,  
23 in other words, or to take a position on any departure or  
24 variance that may be suggested by me, by the probation office,  
25 or by yourself through your counsel.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, has anyone made any promise or  
4 offered you any inducement to get you to plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone threatened you or forced you to  
7 plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone made any promise to you as to  
10 what your sentence will be?

11 THE DEFENDANT: No.

12 THE COURT: So, Mr. Franzone, we have reached the  
13 point in the proceedings when I am going to ask you to please  
14 tell me what it is that you did that makes you believe you are  
15 guilty of the charges in the indictment.

16 THE DEFENDANT: From in or about 2014 to  
17 September 2019, while I managed FF Fund 1, I misrepresented to  
18 investors of the fund that the fund was highly liquid and I did  
19 not disclose the true nature of every investment. I caused  
20 monthly performance reports to be sent to investors by e-mail.  
21 The performance reports did not completely disclose the full  
22 nature of the portfolio or identify the investments. Investors  
23 sent wires to the fund to purchase limited partnership interest  
24 in the fund, including wires that went through the Southern  
25 District of New York.

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1 THE COURT: And at the time did you know that it was  
2 wrong for you to make those, to not advise the investors of  
3 that information?

4 THE DEFENDANT: Yes.

5 THE COURT: And in connection with that, when I say  
6 investors, these were folks that were sending -- I will say  
7 you -- but sending the fund money; right?

8 THE DEFENDANT: Yes.

9 THE COURT: And the statements that you made to them,  
10 in other words the information you provided to them that was  
11 not accurate or omitted certain things, that got them to send  
12 the money to you; is that right?

13 THE DEFENDANT: Yes.

14 THE COURT: Let me ask, Mr. Corozzo, do you know of  
15 any valid defenses that would prevail at trial, do you know of  
16 any reason why your client should not be permitted to plead  
17 guilty?

18 MR. COROZZO: I do not, your Honor.

19 THE COURT: Are there any other questions that the  
20 government believes are appropriate?

21 MS. MORTAZAVI: There are, your Honor. We have two  
22 questions and are happy to take them one at a time or both  
23 together.

24 THE COURT: Yes. Why don't we take it one at a time.

25 MS. MORTAZAVI: We would ask the Court to inquire as

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1 to whether Mr. Franzone was aware at the time he made the  
2 misstatements about the fund's liquidity that the fund's  
3 liquidity was important or material to investors.

4 THE COURT: So, Mr. Franzone, at the time that you  
5 made the representations concerning the fund's liquidity to the  
6 potential investors, and then to investors later on, that you  
7 were aware of the importance of that, the liquidity, to the  
8 investors?

9 THE DEFENDANT: Yes.

10 THE COURT: In other words, these are folks who wanted  
11 to be able to get their money out relatively quickly if they  
12 could?

13 THE DEFENDANT: Yes.

14 THE COURT: All right.

15 MS. MORTAZAVI: And the second question, your Honor,  
16 is to just put a finer point on the colloquy that the Court had  
17 with the defendant, which is that the defendant aimed the  
18 misrepresentations at investors with the intent to obtain their  
19 money, which was their investment in the hedge fund.

20 THE COURT: So, Mr. Franzone, in basically letting  
21 these folks believe, through your statements, that these funds  
22 were liquid, was it your intent that they would in fact invest  
23 in the funds?

24 THE DEFENDANT: Yes.

25 THE COURT: Is there any other questions I should ask



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1 Mr. Franzone?

2 MS. MORTAZAVI: May we have a moment, your Honor?

3 THE COURT: Yes.

4 (Counsel conferring)

5 THE COURT: These are securities. What they were  
6 buying, were those interests, they were securities?

7 THE DEFENDANT: Part of the fund was securities.

8 MS. MORTAZAVI: And, your Honor, just to clarify the  
9 government's understanding, the investors were purchasing  
10 shares of the fund which were themselves securities.

11 THE COURT: Is that accurate, Mr. Franzone, that the  
12 investors were purchasing shares of the fund which were  
13 securities?

14 THE DEFENDANT: Yes.

15 THE COURT: Anything else?

16 MS. MORTAZAVI: No further questions, your Honor.

17 THE COURT: Let me ask if the government could please  
18 summarize what the government's evidence would have been had  
19 Mr. Franzone gone to trial.

20 MS. MORTAZAVI: Certainly, your Honor.

21 Had Mr. Franzone proceeded to trial, the government  
22 was prepared to offer the following evidence, among others:

23 Testimony from investors or limited partners in the  
24 hedge fund that the defendant ran, who were misled by the  
25 defendant's statements, who believed that he would maintain a

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1 highly liquid portfolio of trading in publicly traded  
2 securities, that that mattered to them, and that they gave him  
3 money or property in reliance on his misstatements and that  
4 they did not redeem or take out their investment in the fund  
5 based on the defendant's failure to correct his earlier lies.

6 Second, we would also admit at trial e-mails from the  
7 defendant's personal e-mail account in which he falsely  
8 described that he was trading, including an e-mail sent from  
9 the defendant while he was in Miami, to an investor located in  
10 Manhattan, soliciting and confirming that investor's investment  
11 in the hedge fund.

12 We would produce summary records of bank account  
13 statements and monthly investor reports showing that the  
14 defendant was trading negligible amounts of publicly-traded  
15 securities on public markets and was instead putting the vast  
16 majority of the fund's assets, sometimes as much as 99 percent  
17 of the fund's assets, into private investments; evidence and  
18 testimony that the fund was so illiquid that, by 2019, it could  
19 not fulfill investor redemptions within the required 90-day  
20 notice period and that, as a result, the fund declared  
21 bankruptcy and at the time the fund had only \$300,000 in  
22 brokerage accounts and most of its funds in illiquid assets.

23 We would also establish, through bank records and  
24 monthly investor statements and testimony of witnesses  
25 including through the fund's administrator and through the

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1 bankruptcy trustee, that the defendant had overvalued his  
2 investments substantially including for real estate that he had  
3 purchased which was worth almost \$2 million less than the  
4 valuations he had provided and including for private companies,  
5 at least one of which was a shell company or had ceased  
6 operations that were nonetheless valued on the corporate books  
7 in the multiple millions of dollars despite being worth very  
8 little.

9 As well, we would offer testimony that the defendant  
10 did not have any audited financials despite reassuring  
11 investors that he would maintain audited financials and have  
12 third-parties validate the fees that he was receiving and the  
13 investments of the fund.

14 THE COURT: Thank you.

15 So, Mr. Franzone, did you hear what the prosecutor  
16 just said?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, do you understand that you are giving  
19 up your right to challenge all of the evidence that the  
20 prosecutor just mentioned?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, do both counsel agree that there is a  
23 sufficient factual predicate to -- do all counsel agree that  
24 there is a sufficient factual predicate for the guilty plea?

25 MS. MORTAZAVI: Yes, your Honor.

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1 MR. COROZZO: Yes, your Honor.

2 THE COURT: Does either counsel know of any reason I  
3 should not accept Mr. Franzone's plea of guilty?

4 MS. MORTAZAVI: No, your Honor.

5 MR. COROZZO: No, your Honor.

6 THE COURT: So, Mr. Franzone, because you acknowledge  
7 that you are in fact guilty of the charges in the indictment,  
8 because I am satisfied that you know of your right including  
9 your right to go to trial and that you are aware of the  
10 consequences of your plea including the sentence which may be  
11 imposed, and because I find that you are voluntarily and  
12 knowingly pleading guilty, I'm going to accept your plea and  
13 enter judgment of guilty on the counts in the indictment.

14 Now, the probation department, as I mentioned, is  
15 going to want to interview you in connection with the  
16 preparation of a presentence report.

17 Let me just ask, Mr. Corozzo, Ms. Lipsman, I assume  
18 one or both of you will be present?

19 MR. COROZZO: That's correct, your Honor.

20 THE COURT: So that interview won't take place unless  
21 your attorneys, one or more of your attorneys are with you,  
22 either in person or virtually. Now, the only thing I ask is  
23 that when you do speak to the probation department, that you  
24 make sure that everything you tell them is as accurate as  
25 possible and that you are truthful with them.

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1           Now, you will have an opportunity to go over the  
2           presentence report with your attorneys before your sentencing  
3           so I ask you to read it carefully, point out any mistakes or  
4           errors in there, point out any information that you think  
5           should be in there that isn't, so that they can take that issue  
6           up with the probation officer, and then if it is not resolved  
7           to your and their satisfaction, so that it can be brought up to  
8           me at the time of your sentencing.

9           OK?

10           THE DEFENDANT: Yes. We will have the sentencing date  
11           of July 15 at 10:00 a.m.

12           Does that work for counsel?

13           MS. MORTAZAVI: Yes, your Honor.

14           MR. COROZZO: Yes, Judge.

15           THE COURT: Now, I would ask that the government to  
16           provide a factual statement to the probation office within the  
17           next two weeks, and if defense counsel could contact probation  
18           just to get a date within the next two weeks, not that you have  
19           to have the interview in the next two weeks but that you have a  
20           date when the interview will take place.

21           Now, with regard to submissions, my individual rules  
22           call for the defense submission two weeks prior to sentencing  
23           and the government's submission one week prior to sentencing.

24           So, Mr. Franzone, your bail conditions will remain the  
25           same and so you need to abide by those going forward until

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1 sentencing. OK?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me ask, is there anything else that I  
4 should ask Mr. Franzone or that I should deal with today?

5 (Counsel conferring)

6 MS. MORTAZAVI: Your Honor, only for belt and  
7 suspenders purpose we would ask that the Court ask the  
8 defendant, specifically, that he intends to change his plea  
9 with full knowledge that he is waiving his appellate rights as  
10 to his suppression motion.

11 THE COURT: OK.

12 So, Mr. Franzone, with regard to my earlier mistake,  
13 you are actually waiving your right to appeal anything having  
14 to do with the suppression motion.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 Anything else?

19 MS. MORTAZAVI: Nothing further, thank you.

20 THE COURT: Anything further from the defense?

21 MR. COROZZO: No, your Honor. Thank you.

22 THE COURT: Thank you very much. We stand adjourned.

23 Mr. Franzone, I will see you on July 15.

24 THE DEFENDANT: Thank you, your Honor.

25 THE COURT: OK.

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